

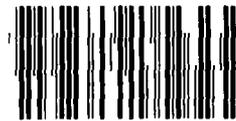
**GAO**

Report to the Chairman, Subcommittee on  
Health and the Environment, Committee  
on Energy and Commerce, House of  
Representatives

April 1987

**CONSUMER  
PRODUCT SAFETY  
COMMISSION**

**Administrative  
Structure Could  
Benefit From Change**



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Human Resources Division  
B-226366

April 9, 1987

The Honorable Henry A. Waxman  
Chairman, Subcommittee on Health  
and the Environment  
Committee on Energy and Commerce  
House of Representatives

Dear Mr. Chairman:

On April 10, 1986, you requested that we review the Consumer Product Safety Commission's (CPSC) administrative structure. Specifically, you asked whether the Commission's functions could be more effectively carried out by a single administrator rather than a commission, and whether CPSC should retain its separate status or be located within an existing executive department.

We could find no objective criteria to measure the effectiveness of one administrative structure compared with another; however, we did find several indicators that suggest CPSC—as a regulatory agency responsible for protecting citizens' health and safety—could benefit from changing to a single administrator: for example, seven of the eight other regulatory agencies concerned with health and safety are headed by single administrators; a single administrator would be less costly; and most people we interviewed, including all former confirmed CPSC Chairpersons, favored a single administrator.

There also are no objective criteria for determining whether an organization should have separate status within the executive branch or be part of an executive department; in addition, we could not find any significant indicators that suggest one organizational status would be better than another. Therefore, we are not making any recommendation with respect to whether CPSC should retain separate status or be located within an existing executive department.

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## Background

CPSC was established by the Consumer Product Safety Act (15 U.S.C. 2051) in 1972 to protect the public against the unreasonable risks of injuries and deaths associated with consumer products. (A legislative history of consumer product safety is discussed in app. II.) The act established CPSC as an independent<sup>1</sup> regulatory commission headed by

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<sup>1</sup>As used in this report, independent means "an agency not under the direct control of the executive branch", separate means "an agency within the executive branch but outside the cabinet departments"

five commissioners appointed by the President for staggered 7-year terms. One of the commissioners is appointed chairperson by the President and serves as the chief operating officer. As the act was initially passed, the chairperson was to serve in that position until his/her term as a commissioner expired. In 1978, the act was amended to provide that the chairperson serve at the President's pleasure. As of March 1, 1987, CPSC had two Commissioners' positions vacant. The term of one of the current Commissioners expires in October 1989; the second, in 1991; and the third, in 1992.

CPSC's principal responsibility is the regulation of an estimated 15,000 consumer products. According to CPSC, these include all consumer products except food, drugs, and cosmetics, regulated by the Food and Drug Administration (FDA); pesticides, regulated by the Environmental Protection Agency (EPA); automobiles and other on-road vehicles, regulated by the Department of Transportation; and firearms, tobacco, and alcohol, regulated by the Department of the Treasury.

CPSC principally fulfills its responsibilities by

- maintaining an injury information clearinghouse,
- participating in and encouraging the development by industry of voluntary product safety standards,
- issuing and enforcing mandatory product safety standards,
- banning products for which adequate safety standards cannot be developed, and
- recalling products that present substantial or imminent hazards to consumers.

In fiscal year 1974, its first full year of operation, CPSC had an appropriation of \$34.8 million and 786 full-time-equivalent staff. Until fiscal year 1982, the staffing level remained about the same, and the appropriations increased slightly. Staffing was reduced from 801 in fiscal year 1981 to 649 in fiscal year 1982, a 28 percent decrease. Staffing has continued to decrease to 527 in fiscal year 1987, a 19 percent decrease since fiscal year 1982. The appropriation was reduced from \$42.1 million in fiscal year 1981 to \$31.8 million in fiscal year 1982, a 25 percent decrease. Since that time there has been little change in the appropriations.

## **CPSC Has Not Had Stable Leadership, Independence, or Diversity in Votes**

The rationale for establishing independent commissions, such as CPSC, includes these assumptions: (1) long-term appointment of commissioners would promote stability and develop expertise; (2) independent status would insulate them from undue economic and political pressures; and (3) commissioners with different political persuasions and interests would provide diverse viewpoints.

However, our review of CPSC, as well as studies of independent regulatory commissions over the last 50 years (see app. IV), shows that these assumptions have not been realized. For example, at CPSC we found that long-term appointment of commissioners has not achieved stability in the leadership positions such as the chairperson and executive director; independent status has not insulated the Commission from economic or political pressures; and the voting record, although not the only indicator of diversity, does not show much diversity in the viewpoints of the Commissioners.

## **High Turnover of Leadership Positions**

Since CPSC was established, there has been little stability in its leadership; both present and former CPSC officials cited leadership turnover as the cause of much uncertainty within the Commission. For example, through 1986, CPSC has had nine Chairpersons—four acting and five confirmed. The four acting Chairpersons served for periods of 2 to 5 months, and the confirmed Chairpersons, excluding the current Chairperson, served for periods ranging from 25 to 41 months. Other work we have done on the management of federal agencies suggests that the acting status of high-level officials seriously hinders their ability to make difficult decisions and thereby provide effective leadership.

In addition, since 1973 CPSC has had eight executive directors, of whom five served in an acting role. One of the acting executive directors was subsequently appointed as the executive director. Furthermore, during 1976, 1979, 1982, and 1985, the position of executive director was vacant for periods of 1 to 10 months. Finally, of CPSC's 13 former Commissioners, 9 did not complete their appointed terms.

## **Independent Status Difficult to Achieve**

Relative independence from political and economic forces was often cited in the legislative history of CPSC as a reason for creating it as an independent commission. However, the following factors suggest that real independent status of CPSC is difficult to achieve.

As discussed previously, the Consumer Product Safety Act was amended in 1978 to enable the President to replace the chairperson at any time. This would not, however, affect the chairperson's term as a commissioner.

The act also provides that whenever CPSC submits budget requests or estimates, legislative recommendations, testimony, or comments on legislation to the President or the Office of Management and Budget (OMB), CPSC must transmit a copy to the Congress. Although this action allows the Congress to see what CPSC originally submitted, it has not kept the President or OMB from making changes, as they would in documents submitted from any other agency. Additionally, through such means as the Paperwork Reduction Act, which requires agencies to submit questionnaires and related documents to OMB for review, OMB has exerted authority over the information that CPSC collects for regulatory purposes. The Congress also has exercised considerable control over the activities of CPSC through budget approval, oversight, and authorization hearings.

In an article on independent regulatory commissions, the author stated:<sup>2</sup>

"It is commonly known that the independent regulatory commissions are not entirely independent. Quite the contrary, they are buffeted about by all types of political actors: the courts, Congress, the President, interest groups, and bureaucratic agencies all exert substantial influence on the commissions."

### Commission Votes Consistent With Chairperson and Staff Views

Another rationale for independent commissions is that they provide diverse points of view. As mentioned earlier, we recognize that voting records are not the only indicator of diversity. Much discussion about the pros and cons of various issues obviously takes place before votes are taken. But, in the final analysis, it is the votes of the commissioners that result in policy positions. Analysis shows that the votes of CPSC's Commissioners were in agreement with the votes of the Chairperson and the views of the Commission staff a high percentage of the time. At CPSC, the Commissioners voted for the options recommended by the staff nearly 90 percent of the time, and the Chairperson voted with the majority vote 95 percent of the time. CPSC's Commissioners voted unanimously in 73 percent of the votes taken over a 5-year period, as shown in table 1.

<sup>2</sup>John R. Hibbing, *Congress & the Presidency* (Washington, D C The American University, vol. 12, no 1, spring 1985), pp 57-68

**Table 1: Analysis of Commission Votes,  
Fiscal Years 1982-86**

Fiscal year	Total Votes	Unanimous votes		Chairperson in majority	
		Number	Percent	Number	Percent
1982	112	91	81	108	96
1983	98	79	81	92	94
1984	169	124	73	164	97
1985	97	67	69	90	93
1986	117	71	61	108	92
<b>Total</b>	<b>593</b>	<b>432</b>	<b>73</b>	<b>562</b>	<b>95</b>

This degree of unity between the Chairperson and the other Commissioners at CPSC is not unusual for federal regulatory agencies. According to a 1977 study,<sup>3</sup> "... the influence of chairmen in comparison with that of their colleagues is substantial, sometimes determinative." The study further stated that "in formal proceedings and other instances when there are collective decisions, the chairman's decision has great impact."

We also reviewed a random sample of 41 briefing packages, documents that the staff prepares for the Commissioners before a vote, to determine how often the Commissioners' votes concurred with the staff recommendation on a particular issue. We found that 27 of the briefing packages reviewed had specific staff recommendations; the Commissioners' votes concurred, in whole or in part, with the staff recommendations 89 percent of the time. According to the 1977 study, a high degree of concurrence between the Commissioners and staff recommendations is not unusual; staff recommendations are quite influential in decision making, and, realistically, Commissioners cannot be expected to depart regularly and extensively from the recommendations provided by the staff.

## Single Administrator Less Costly and Favored by Others

Most high-level officials we interviewed indicated that the commission administrative structure was not the most effective one for running an agency. In addition, several studies indicated that severe problems existed with the commission structure; most other health and safety regulatory agencies are headed by single administrators, and a single administrator is less costly than the commission structure.

We interviewed high-level officials—such as former Chairpersons of CPSC, single administrators and other officials of other health and safety

<sup>3</sup>David M. Welborn, Governance of Federal Regulatory Agencies (Knoxville: The University of Tennessee Press, 1977), p. 109

regulatory agencies, and officials of public interest and industry groups—to obtain their opinions about managing CPSC with a single administrator versus a commission (see app. I). Of the 28 high-level officials we interviewed who expressed an opinion, 19 (68 percent) believed that a commission is not an effective administrative structure for CPSC. All former confirmed Chairpersons and former executive directors of CPSC indicated that CPSC's administrative structure should be changed to that of a single administrator. In discussing their opinions, these officials cited many problems with the current structure including the following:

- Commission decisions are not prompt.
- The Commissioners often do not understand the technical issues that the staff has to deal with in its work.
- There is competition among the Commissioners concerning the use of CPSC resources.
- The commission structure is more appropriate for an agency with a significant adjudication function, which is not a large part of CPSC's responsibilities.
- The Commissioners tend to "micromanage" the day-to-day operations and are too involved with the process of preparing the budget and operating plan.

On the other hand, others interviewed, including three of the five Commissioners, as of May 1986, and one of the two public interest groups, believed that for CPSC the commission structure was better than a single administrator. Their reasons included (1) the commission structure is necessary in order for CPSC to maintain its independence; and (2) the commission structure ensures continuity, exchange of ideas, and a mix of perspectives. This need for a mix of perspectives—including diversity of background, areas of expertise, and political considerations—outweighs the disadvantages of a commission.

About 3 percent<sup>4</sup> of CPSC's annual budget is spent on the salary, supporting staff, and other associated costs for the four Commissioners (not including the Chairperson). CPSC's fiscal year 1986 operating plan showed that about \$1.1 million was budgeted for these four Commissioners. About \$839,000 of this was for their salaries and their staffs;

<sup>4</sup>Two factors could affect this percentage. As of March 1, 1987, there were two commissioners' positions open, and the Commission had voted to consolidate the offices of the Commissioners and their staffs with other CPSC headquarters staff in Bethesda, Maryland.

\$59,000 for operating costs, such as travel and subscriptions for periodicals; and \$215,000 for their share of common costs, which are primarily rent and utilities. The budgeted costs in fiscal year 1985 were also about \$1.1 million. CPSC's budget officer said that these budgeted costs have remained fairly consistent over the last few years. Actual costs have varied primarily because of vacant commissioner or staff positions. Therefore, eliminating the four Commissioners and changing to an organization with a single administrator would eliminate the \$1.1 million in budgeted costs for the commission structure.

As mentioned above, seven of the eight other health and safety regulatory agencies that we identified have single administrators. These are EPA, the Federal Aviation Administration, FDA, the Food Safety and Inspection Service, the Mine Safety and Health Administration, the National Highway Traffic Safety Administration, and the Occupational Safety and Health Administration (see app. III). We interviewed officials in five of these agencies, all of whom supported the single administrator structure, particularly because this structure expedited the decision-making process.

The Nuclear Regulatory Commission, the other health and safety regulatory agency with a commission administrative structure, has been criticized by the Congress and others for an inability to carry out its mission because of its structure. Conversely, there has been at least one effort to change EPA into a commission.

A number of studies, such as those by the Hoover Commission and the Ash Council, have been done over the last 50 years on regulatory commissions. All of the studies we reviewed found some significant problems with the commission structure. Although some of these studies recommended changes to improve such agencies, others found little value in the commission approach and advocated their abolition. Some of these studies recommended replacing the multimember commissions with agencies headed by single administrators. Additional detail on these studies and their principal findings is in appendix IV.

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## Separate Agency or Part of Executive Department?

The legislative history of CPSC, as discussed in appendix II, shows that the greatest amount of debate in both houses of the Congress on the creation of CPSC centered on the question of the need for a separate agency. Opinions differed at the time: one proposal was to place the responsibility in FDA; another proposal was to create CPSC as a separate agency. We found that opinions still differ on this question, and we

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could find no criteria or preponderance of evidence for determining whether CPSC should remain as a separate agency or be made part of an executive department.

Prior to establishing CPSC, the Congress considered several options, including the above proposals, for carrying out consumer product safety functions and responsibilities. These included

- adding more consumer product safety functions to the role of FDA;
- creating a separate consumer safety agency with three different commissions—Foods and Nutrition, Drugs, and Product Safety—each to be headed by a commissioner; and
- establishing an independent regulatory commission.

Some of the arguments that influenced the decision to establish CPSC as an independent commission included the belief that

- an independent commission could best carry out the legislative and judicial functions of the Consumer Product Safety Act because it would be better insulated from economic and political pressures;
- an independent commission assures high visibility for consumer product safety;
- regulatory programs in executive departments typically suffer from lack of adequate funding and staff; and
- FDA had not been performing many of its responsibilities effectively.

As an independent regulatory commission, CPSC was established to be separate from cabinet departments. Our discussions with CPSC and other public and private sector officials suggest that disagreement still exists about CPSC's separate organizational status. For example:

- Three of the four former confirmed CPSC Chairpersons told us that CPSC should not remain a separate agency; the other Chairperson told us that it did not matter. On the other hand, the current Commissioners and most of CPSC's high-level staff said that CPSC should remain a separate agency.
- Officials at the Department of Health and Human Services (HHS) disagreed as to whether CPSC should be in FDA. One high-level official told us that CPSC should be placed in FDA; another felt strongly that CPSC should not be there.
- Similarly, differences of opinion exist in the private sector. For example, of the seven groups interviewed, officials in four thought CPSC should

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remain a separate agency; two thought it should not, and one expressed no opinion.

The officials who supported placing CPSC in an executive department generally cited one or more of the following reasons for their position: (1) the Secretary of an executive department can better protect the agency from budgetary cuts; (2) the mission of CPSC is compatible with the mission of HHS; and (3) there is a need to reduce the number of small separate agencies reporting to the President. Officials who favored separate agency status for CPSC generally cited one or more of the following reasons for their position: (1) it provides more visibility to consumer product safety; (2) it means that consumer product safety does not have to compete with other high priority missions within an executive department; and (3) it reduces the opportunity to politicize the agency.

We compared the organizational status of CPSC with that of eight other health and safety regulatory agencies; we tried to determine if there was any rationale for the organizational status or administrative structure of these agencies. We found differences in the status and structure of the nine regulatory agencies: i.e., six are part of executive departments; three are separate. Appendix III lists the nine agencies, indicates each one's status within the federal government, and provides each agency's authorizing legislation or administrative authority.

Finally, major studies of independent regulatory commissions do not contain any consistent recommendations or criteria for their organizational status within the federal government. For example, the Brownlow Committee recommended that independent regulatory commissions be integrated into the executive branch where they would become agencies within executive departments. The Ash Council recommended replacing regulatory commissions with organizations headed by single administrators reporting to the President. On the other hand, the Hoover Commission recommended maintaining independent status for regulatory commissions.

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## Conclusions

We found several indicators suggesting that CPSC could benefit by changing to a single administrator. Some of the basic assumptions about the need to have commissioners at CPSC have not been realized. The high turnover rate of Chairpersons and executive directors, including the acting status of many of these, indicates a lack of stability in Commission leadership; although relative independence was a goal of the Consumer Product Safety Act, both OMB and the Congress have exercised

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authority over CPSC through various mechanisms; and, although the voting records are not the only indicator of differences in viewpoints, the votes of Commissioners were in agreement with the votes of the Chairperson and the Commission staff views a high percentage of the time. Furthermore, the commission structure is more expensive than a single administrator, and changing the structure to a single administrator would save about \$1 million a year.

Our views and findings are supported by other evidence:

- Sixty-eight percent of the high-level officials we interviewed, who expressed an opinion, including all former confirmed chairpersons and executive directors of CPSC, indicated that CPSC should be headed by a single administrator.
- All of the major studies over the past 50 years, including the Hoover Commission and Ash Council reports, have indicated significant problems with the commission administrative structure.
- The regulatory duties and responsibilities of CPSC are similar to other health and safety agencies that are headed by single administrators. For example, seven of the eight other health and safety regulatory agencies we identified are headed by single administrators.

Concerning CPSC's separate agency status, the legislative history indicates that CPSC was created as an independent commission because of the emphasis, at the time, the Congress wanted to assign to consumer product safety. From the inception of CPSC until the present, opinions have differed on the appropriate organizational status for CPSC. We could not identify any objective criteria for determining whether CPSC should remain a separate agency or become part of HHS. Therefore, we are making no recommendation about the organizational status of CPSC.

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## Matter for Consideration by the Congress

The Congress could consider amending section 4 of the Consumer Product Safety Act to provide for a single administrator appointed by the President with the advice and consent of the Senate.

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## Commission Comments

We provided the Chairperson and the other CPSC Commissioners an opportunity to review and comment on a draft of this report. The Chairperson and one of the Commissioners provided written comments.

These are included as appendix V. The other Commissioner commented orally.

The Chairperson stated that, although he once believed that the advantages of a collegial body outweighed the disadvantages, he now believes that CPSC should be headed by a single administrator. The Chairperson also said that CPSC should remain a separate agency, pointing out that placing CPSC into another department or agency would add at least one layer of administrative decision making and possibly give the public the impression that the federal government was less involved or less interested in product safety.

The other two Commissioners supported retaining the commission structure. One commissioner told us that the commission structure (1) provides the continuity and institutional memory that would not be present with a single administrator, (2) gives product safety a visibility it might lose under a single administrator, (3) provides for an exchange of ideas that would not be present with a single administrator, and (4) encourages the staff to be more independent-minded.

The other Commissioner stated (see app. V) that, although most issues before the Commission are relatively noncontroversial, there are times when the subject matter is significantly substantial, controversial, or both. At such times, debate and the exchange of ideas among a collegial body are valuable. Changing the Commission to a three-member body would maintain the strengths of the collegial system while providing most, if not all, of the advantages of a single administrator. Such a structure would expedite decision making and improve accountability while substantially reducing expenditures.

We believe that changing to a three-member commission would result in savings—probably about half as much as changing to a single administrator. However, although a three-member commission would reduce the number of top officials involved in decisions and operations, it would not provide the centralization of authority and accountability that a single administrator would provide. The available evidence suggests to us that changing to a single administrator could provide greater benefits.

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Copies of this report are being sent to the Chairperson of CPSC, the other CPSC Commissioners, and other interested parties. We will make copies available to others upon request.

Sincerely yours,



Richard L. Fogel  
Assistant Comptroller General



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**Abbreviations**

<b>CPSC</b>	<b>Consumer Product Safety Commission</b>
<b>EPA</b>	<b>Environmental Protection Agency</b>
<b>FDA</b>	<b>Food and Drug Administration</b>
<b>GAO</b>	<b>General Accounting Office</b>
<b>HHS</b>	<b>Department of Health and Human Services</b>
<b>OMB</b>	<b>Office of Management and Budget</b>

# Objectives, Scope, and Methodology

The objectives of this study were to (1) evaluate the current Consumer Product Safety Commission (CPSC) organization and administrative structure, considering reductions that have occurred in the agency's budget and staff and changes in its mission approach, to determine whether CPSC's functions could better be carried out by a single administrator; and (2) consider whether CPSC should remain a separate agency or be placed within another regulatory agency or an executive department. In performing this study, we also considered whether the number of commissioners should be reduced.

To accomplish our objectives we

- reviewed studies of the organization and management of regulatory agencies;
- reviewed the legislative history of CPSC;
- reviewed the history of other health and safety regulatory agencies to determine whether there was expressed rationale for these agencies having been established as commissions or with single administrators and within executive departments or as separate agencies;
- interviewed the five Commissioners as of May 1986 (two have left CPSC since our interviews); all four former confirmed Chairpersons; all four former executive directors and one former deputy executive director and acting executive director; two former Commissioners; officials of two public interest groups (Consumer Federation of America and Consumers Union), three industry groups (the National Paint and Coatings Association, Outdoor Power Equipment Institute, and Toy Manufacturers of America), and two voluntary standards-setting groups (American National Standards Institute and Underwriters Laboratories, Inc.); and selected Commission staff to obtain their views on the organization and placement of CPSC;
- interviewed senior policymaking officials in the Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), the Mine Safety and Health Administration, the National Highway Traffic Safety Administration, the Nuclear Regulatory Commission, the Occupational Safety and Health Administration, and the Occupational Safety and Health Review Commission to (1) obtain their views on the advantages and disadvantages of their administrative structure and organizational status within an executive department or as a separate agency and (2) determine how they carried out their adjudicative responsibilities; and
- interviewed senior Department of Health and Human Services (HHS) policymaking officials to obtain their perspectives on the advantages, disadvantages, and effect of making CPSC a separate agency within HHS or a part of another HHS agency.

We also reviewed selected CPSC records and met with CPSC officials and staff to (1) determine the procedures for carrying out its rulemaking and adjudicative responsibilities; (2) determine the systems for collecting data on injuries and deaths involving consumer products; (3) determine appropriation and staffing levels since CPSC was established; (4) update a CPSC staff study of the costs and savings of moving the commissioners and approximately 25 other staff members from Washington, D.C., to Bethesda, Maryland; (5) determine if the administrative structure was the most efficient, effective, and economical way for CPSC to carry out its responsibilities; (6) determine the number of rulemaking and compliance actions taken by CPSC; and (7) determine the subject of Commission votes, the extent to which they were unanimous, the extent to which the Chairperson was in the majority, and the extent to which the Commission votes agreed with staff recommendations.

In reviewing the Commission votes, including all votes taken in fiscal years 1982 through 1986, we determined the number of unanimous votes and the extent to which the Chairperson was in agreement with the other Commissioners. In addition, we reviewed staff briefing packages (documents provided by the staff to the Commissioners before a Commission vote) to determine how often the Commissioners agreed with the staff recommendations on a particular issue. Because of the extensive work involved in comparing Commissioners' votes with staff recommendations, we limited our review to a 20-percent sample (with a random start and every fifth vote thereafter) of votes in fiscal years 1985 and 1986 for a total of 41 staff briefing packages.

Our review was done between May and December 1986 in accordance with generally accepted government auditing standards.

# Legislative History of Consumer Product Safety

Before the mid-1960's, the federal government's response to the safety of products intended for consumer use was piecemeal, often after tragedies involving specific products. These responses included the passage of the Flammable Fabrics Act in 1953 and the Refrigerator Safety Act in 1956. The original Flammable Fabrics Act was passed principally because of concern about two specific products, children's cowboy chaps and highly flammable ("torch") sweaters. The act was amended in 1967 to expand the list of wearing apparel covered by the act.

Recognizing the need for a more comprehensive approach to assuring the safety of consumer products, the Congress passed legislation in 1967 establishing the National Commission on Product Safety. Its charge was to conduct a comprehensive study and investigation of the scope and adequacy of measures employed to protect consumers against unreasonable risk of injuries that may be caused by hazardous household products.

The Commission submitted its final report in June 1970. It found that each year 20 million Americans were injured in their homes as a result of incidents connected with consumer products. Of that total, 110,000 were totally disabled and 30,000 were killed. They concluded that a significant number could have been spared if more attention had been paid to hazard reduction and that "[t]he exposure of consumers to unreasonable consumer product hazards are excessive by any standard of measurement."

The National Commission on Product Safety made a number of recommendations, including the enactment of a consumer product safety act and establishment of an independent Consumer Product Safety Commission. The recommendations included giving the proposed agency (1) authority to develop and set mandatory consumer product standards, (2) power to seek a court order to enjoin the marketing of products that create an unreasonable risk to public safety, and (3) power to enforce its various safety measures. The National Commission proposed that the agency be headed by five commissioners appointed by the President for 5-year terms.

The National Commission's report did not explain why they recommended a five-member commission. However, the National Commission stated that it was recommending an independent agency because, if subordinated to a larger agency administering other equally comprehensive programs, the emphasis on consumer safety was certain to suffer.

Based on the National Commission's recommendations, the Congress began consideration of a number of bills to establish a consumer product safety agency. The House Committee on Interstate and Foreign Commerce essentially considered two proposals for improving the federal government's effort to improve consumer safety. One was an administration-sponsored proposal to expand the role of FDA. The other was to establish an independent consumer safety agency based on the recommendations of the National Commission on Product Safety. The Committee passed the latter proposal although seven members dissented, preferring instead to strengthen the role of FDA. The Committee-passed proposal was approved by the full House.

The Senate also considered two proposals for improving consumer safety. It considered the administration's proposal to strengthen the role of FDA and a bill to establish an independent agency, including the transfer of FDA to the new agency. With two members dissenting, the Commerce Committee approved the latter bill. After some changes by the Committee on Labor and Public Welfare, none of which affected the administrative structure or organizational status, the Senate passed the bill. The Senate-passed bill provided for an administrator appointed by the President for a 5-year term.

In conference, the Senate accepted the House-passed version as it relates to the establishment of an independent, five-member commission for consumer safety. FDA remained in the Department of Health, Education, and Welfare (now HHS) although some FDA functions were transferred to the new agency.

The greatest amount of debate in both the House and the Senate related to whether to centralize responsibility for consumer product safety in FDA or establish an independent agency. Arguments for giving the responsibility to FDA related partly to

- FDA's already having a field staff carrying out a similar function;
- not having to spend a great deal of time getting organized;
- preventing the proliferation of government organizations; and
- having the prestige of the Health, Education, and Welfare Secretary to argue for additional funds and to gain access to the President.

Arguments against giving the responsibility to FDA included dissatisfaction with the way FDA had been carrying out many of its responsibilities and the need for independence from political pressures.

The report of the House Committee on Interstate and Foreign Commerce states that the proposal to establish an independent regulatory agency

"... reflects the committee's belief that an independent agency can better carry out the legislative and judicial functions contained in this bill with the cold neutrality that the public has a right to expect of regulatory agencies formed for its protection. Independent status, and bi-partisan commissioners with staggered and fixed terms, will tend to provide greater insulation from political and economic pressures than is possible or likely in a cabinet-level department. The Commission's decisions under this legislation will necessarily involve a careful meld of safety and economic considerations. This delicate balance, the committee believes, should be struck in a setting as far removed as possible from partisan influence. Also, the creation of a new independent agency, it is thought, will assure that the regulatory program contained in this bill will be highly visible to get off to a firm and vigorous start "

The Consumer Product Safety Act, which was approved October 27, 1972, established CPSC as an independent regulatory commission with responsibility for protecting consumers from unreasonable risk of injury associated with consumer products. The legislation provided that CPSC would be headed by five commissioners, appointed by the President with the advice and consent of the Senate, with staggered 7-year terms. One of the commissioners was to be appointed by the President to be the chairperson. The original legislation provided that the chairperson would serve in that capacity until the expiration of his/her term of office. This provision was amended in 1978, and the chairperson now serves at the pleasure of the President.

Another major amendment to the Consumer Product Safety Act occurred in 1981 when section 9 of the act, relating to setting of mandatory standards, was amended to require CPSC to first consider whether (1) voluntary standards submitted to it were likely to result in the elimination or adequate reduction of the risk of injury and (2) there was likely to be substantial compliance with such a standard.

In addition to carrying out the requirements of the Consumer Product Safety Act, CPSC also administers the Flammable Fabrics Act (15 U.S.C. 1191), the Federal Hazardous Substances Act (15 U.S.C. 1261), the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471), and the Refrigerator Safety Act (15 U.S.C. 1211).

# Health and Safety Regulatory Agencies' Organizational Status and Establishing Authority

<b>Agency</b>	<b>Organizational status</b>	<b>Establishing authority</b>
Consumer Product Safety Commission	Independent	Consumer Product Safety Act, October 27, 1972 (15 U S C 2051)
Environmental Protection Agency	Independent	Reorganization Plan No 3 of 1970, July 9, 1970 (effective December 2, 1970)
Federal Aviation Administration	Department of Transportation	Established as a separate agency by the Federal Aviation Act of 1958 and became a part of the Department of Transportation in 1967, according to the Department of Transportation Act
Food and Drug Administration	Department of Health and Human Services	Administratively established agency that evolved from the U S Department of Agriculture's Bureau of Chemistry in the 1800's (current name given in 1931)
Food Safety and Inspection Service	Department of Agriculture	Established in June 1981; succeeded the Food Safety and Quality Service, established by the Secretary of Agriculture, according to Reorganization Plan No 2 of 1953 and 5 U S C 301
Mine Safety and Health Administration	Department of Labor	Federal Mine Safety and Health Act of 1977 (30 U S C 801)
National Highway Traffic Safety Administration	Department of Transportation	Highway Safety Act of 1970, December 31, 1970 (23 U S C 401)
Nuclear Regulatory Commission	Independent	Energy Reorganization Act of 1974, October 11, 1974 (42 U S C 5801) and Executive Order 11834, January 15, 1975
Occupational Safety and Health Administration	Department of Labor	Occupational Safety and Health Act of 1970, December 29, 1970 (29 U S C 651)

# Summary of Major Studies on Regulatory Commissions

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A number of studies done over the last 50 years have been critical in varying degrees of regulatory commissions. The studies have reiterated the weaknesses of collegial regulatory bodies and recommended actions to correct the identified problems.

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## 1937—Brownlow Committee Report

In 1937, the Committee on Administrative Management (the Brownlow Committee), appointed by President Franklin D. Roosevelt, published its report, which stressed the lack of coordination among independent regulatory commissions and between the independent agencies and other government branches. The report highlighted the need for reorganization to improve coordination. The proposed solution was to abolish the independent regulatory commissions and integrate them into the executive branch where the commissions would become agencies within the executive departments. Once relocated, the commission functions would be divided between an administrative section directed by a single administrator and a judicial section that would remain independent in the making of regulatory decisions.

The Brownlow Committee Report said commissions were a

“... headless fourth branch of the government, a haphazard deposit of irresponsible agencies and uncoordinated powers. They do violence to the basic theory of the American Constitution that there should be three major branches of the government and only three. The Congress has found no effective way of supervising them, they cannot be controlled by the President, and they are answerable to the courts only in respect to the legality of their activities.”

The main thrust of the Brownlow Committee Report was that policy and administration could be coordinated in the several regulatory fields only if the agencies were responsible to a Cabinet head and ultimately to the President. The Executive Reorganization bill of 1938, which contained many of the recommendations of the Brownlow Committee, was defeated in the Congress, partly out of concern that it would give too much power to the President.

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## 1949—First Hoover Commission Report

Unlike the Brownlow Committee, the first Hoover Commission concluded that the regulatory commissions had a rightful place in the political system, but found that they had generally failed to perform up to expectations. The Commission's recommendations tended to be concerned with the organizational status and administrative structure of commissions. The Commission's report argued that the regulatory commissions would be more effective and efficient if the administrative

responsibilities were vested in the commission chairperson. Echoing the Brownlow Committee, the Hoover Commission also noted the lack of coordination between the commissions and the agencies in the executive branch with similar regulatory responsibilities. To overcome this problem, it recommended that the position of administrative management director in the Bureau of the Budget (now OMB) be established to "suggest ways and means to improve and thereby reduce the cost of disposing of business before administrative agencies."

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### 1955—Second Hoover Commission Report

The Second Hoover Commission Report also emphasized internal commission procedural operations, structure, and management. It supported the concept of an integrated legal staff under a general counsel; improving the internal procedures, dividing where possible the judicial and executive functions of administrative commissions; and increasing the independence of hearing examiners. No significant changes in the organization and functions of independent regulatory commissions resulted from this Commission's report.

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### 1960—Redford Report and Landis Report

In 1960, two reports were published addressing in a more limited way the special problems related to operations and coordination posed by independent regulatory commissions. These reports suggested coordinating mechanisms to ensure a greater degree of accountability to the executive branch. The first of these, the Redford Report, prepared for the President's Advisory Committee on Government Organization, suggested statutory changes to allow policy direction from the President. The second report, the Landis Report, proposed that the administrative powers of the commission chairperson be enhanced and that staff positions be made more attractive by delegating authority. The report further suggested that the formulation of regulatory policy come under presidential guidance to ensure uniformity. Such guidance would be provided by naming special White House assistants to oversee and coordinate regulatory policy.

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### 1971—Ash Council Report

The 1971 report of the President's Advisory Council on Executive Organization (the Ash Council) found regulatory commissions to be essentially ineffective and unable to respond well and in a timely fashion to economic, technological, and social changes. These weaknesses were attributed by the Council primarily to independence from presidential authority, collegial administration, and the judicial cast of agency activities.

The Council's report recommended a major restructuring of the independent regulatory commission system

"... to assure coordination of regulatory matters with national policy goals, to improve the management efficiency of regulatory functions, to improve accountability to the Congress and the Executive Branch, and to increase the probability of superior leadership for regulatory activities "

This was to be accomplished by eliminating, in most cases, the plural-member commissions and replacing them with organizations headed by single administrators responsible to the President.

The Ash Council Report was the subject of extensive discussion for several years after its release. Although the report has had its supporters, most commentators have been unconvinced, believing that the Council failed to make a logical case since it lacked factual or analytical evidence for most of its conclusions. The changes and reforms directly attributable to the Ash Council were negligible.

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## 1970's—Congressional Studies of Regulatory Commissions

Two comprehensive congressional studies of regulatory commissions, of the problems attending the regulatory process, and of the needs for regulatory reform were done by the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce (the Moss Report) and by the Senate Committee on Governmental Affairs (the Ribicoff Report). The Moss Report (1976), in contrast to some of the earlier proposals for sweeping reorganization of the regulatory process, concluded that regulatory reform can be accomplished only if approached agency by agency and program by program, not with any across-the-board solution. Like earlier studies, however, the report identified certain common failings in the agencies studied. These included excessive attention to the special interests of regulated industries and underrepresentation of the broad public interest, lack of accountability to elected public representatives, unnecessary delays and cumbersome procedures, and weaknesses in the process for selecting "regulators [i.e., commissioners] of high quality."

The six-volume Ribicoff Report, Study on Federal Regulation (1977-78), represents an extremely comprehensive effort to examine federal regulation and to assess the impact of regulatory programs and the need for change. The study examined, among other things, the regulatory appointments process, congressional oversight of regulatory agencies, public participation in the regulatory process, delay in the regulatory

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process, and regulatory agency structure and coordination. Reflecting the congressional rather than the executive branch perspective evident in the Brownlow Committee, the Landis, and the Ash Council Reports, both the Moss and Ribicoff Reports focused on maintaining the independence of the regulatory commissions from the executive branch rather than on the problems of coordination facing the President.

# Comments From the Consumer Product Safety Commission

UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207

The Chairman

February 9, 1987

The Honorable Charles A. Bowsher  
Comptroller General of the United States  
U.S. General Accounting Office  
441 G Street N.W.  
Washington, D.C. 20548

Dear Mr. Bowsher:

I am in receipt of your draft report regarding possible changes in the organizational structure of the Consumer Product Safety Commission (CPSC). I appreciate the opportunity to comment.

With regard to whether the CPSC should remain a collegial body or should be headed by a single administrator, a bit of background will help put my thoughts in perspective. As you are probably aware, I have served as Chairman of the CPSC on two different occasions, the first as a recess and the second as a duly confirmed appointee. During the first period, which ran from December 31, 1984 to December 20, 1985, the Commission ran relatively smoothly from an administrative standpoint. As a consequence, it was my feeling during that time and for a while thereafter, that the advantages of a collegial body outweighed the disadvantages. However, my more recent experience in the Chairmanship, dating from July 17, 1986 to the present, has brought me to the point of view held by all previous CPSC Chairmen, namely that the reverse is the case. As a consequence, I now find myself in agreement with your recommendation that the CPSC be headed by a single administrator.

There are many serious deficiencies in the CPSC's current mode of operation. First, the distinction between purely administrator functions and regulatory policy, as outlined in sub-sections 4(f)(1) and 4(f)(2) of the Consumer Product Safety Act (CPSA), has, historically, been subjected to varying interpretations. Second, any interpretation made by the Chairman has been, and continues to be, open to challenge by a majority on the Commission. Third, due to the amount of consultation and negotiation necessary to reach and implement decisions given such circumstances, action is not being taken as quickly or as efficiently as would be possible with a single administrator. Moreover, dealing with a single administrator would improve accountability, would be less confusing to interested parties outside the Commission, and would be less of an expense to the nation's taxpayers. As your report properly points out, over \$1 million per year could be saved if a single administrator ran the CPSC.

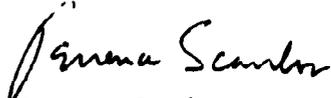
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Comments From the Consumer Product  
Safety Commission

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As to whether the CPSC should remain independent, I feel strongly that it should regardless of whether it remains a collegial body or is headed by a single administrator. Were the CPSC to be absorbed into another department or agency, at least one layer of administrative decision-making would be added, increasing further the time it would take to reach and implement decisions, especially where public health and safety are involved. Also, the public might get the impression, however inaccurate, that the federal government was either less involved in or less interested in product safety. As a consequence, the Commission's ability to educate, or otherwise protect in a timely manner, the public against unreasonable risks of injury associated with consumer products could be compromised.

Having said that, let me also compliment your staff on the extensive research reflected in the draft report. Please let me know if you have any questions, or if I can provide additional information.

Sincerely,



Terrence Scanlon  
Chairman



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D C 20207

February 17, 1987

Mr. Richard L. Fogel  
Assistant Comptroller General  
United States General Accounting Office  
Washington, D.C. 20548

Dear Mr. Fogel:

Pursuant to your request of January 30, I am forwarding my comments on the draft report prepared at the request of Chairman Waxman on the organizational structure of the Consumer Product Safety Commission. I trust that these comments will be made a part of the final report.

If I can be of further assistance, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Anne Graham".

Anne Graham  
Commissioner



U S CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D C. 20207

Statement

Anne Graham, Commissioner

February 13, 1987

Efforts to limit the scope of the Federal Government with regard to unnecessary intrusion are commendable and needed. However, the limit of this tenet is the point where the government in general or in this case the Consumer Product Safety Commission stops executing its charter most effectively.

If serious consideration is to be given to what structure would best serve consumer product protection by the Federal Government, it is imperative that the debate rise above the current climate and address the credibility and integrity of the institution. As John Adams noted we are "a government of laws, and not of men." That premise should prevail as decisions are made on how best to protect the American public from unreasonable risk of injury from consumer products.

With that in mind, I believe there are significant benefits for supporting a collegial structure at the Consumer Product Safety Commission. Many of those benefits - both practical and philosophical - have been addressed in the General Accounting Office report. Given the fact that there appears to be no overriding criteria which would militate against the collegial structure, I believe a modification of the Commission's statutory structure to that of a standing three member body, with a quorum requirement of two, would retain the outstanding strengths of flexibility, independence and diversity of opinion inherent in the collegial system, and would provide most, if not all, of the advantages identified by the General Accounting Office on behalf of a single administrator. A three member body should expedite decision-making and implementation of decisions. A two member quorum would provide each Commissioner more accountability and would strengthen the ability of the body to resolve issues on the agenda

expeditiously. Also, expenditures would be substantially reduced from those of the current structure, both in absolute terms, and in relation to the size of the agency already under reasonable, yet real fiscal restraints.

Of course, there are merits to a thorough investigation of the propriety of independent regulatory agencies as a whole. However, the Consumer Product Safety Commission should not be targeted alone.

With regard to the relative unanimity of votes on matters before the Commission, it should be noted that the collegial debate may contribute to consensus, and in most cases - as with other independent agencies - the issues before this Commission are relatively noncontroversial. However, there are times when the subject matter is significantly substantive and/or controversial. It is precisely in those cases which are complicated, sensitive and/or divisive, that the benefits of debate and the exchange of ideas among a collegial body enhance sound judgement and decision-making, and ensure accountability of the individual Commissions and the integrity of the process.

Thus, I must conclude that a three member body with a two member quorum provides the diversity, independence and credibility necessary to best serve the American public.

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